Judge Davis 8

14-550

Reversed

Chief Justice Durte

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. ~~436.~~ 221

THE UNITED STATES, APPELLANTS,

vs.

HENRY J. HUNT.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 20, 1870.

Dec 1871

SUPREME COURT OF THE UNITED STATES.

No. 436.

THE UNITED STATES, APPELLANTS,

vs.

HENRY J. HUNT.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims.

HENRY J. HUNT
vs.
THE UNITED STATES. } No. 6156.

To the honorable the Court of Claims:

The petition of Henry J. Hunt, brevet major general of the Army of the United States, and colonel commanding the 5th Regiment of United States Artillery, respectfully shows to your honors:

That, by virtue of the 3d section of the act of March 3, 1865, it is enacted: "That, from and after the 1st of March, 1865, and during the continuance of the present rebellion, the commutation price of officers' subsistence shall be fifty cents per ration," with a proviso thereto attached, "that said increase shall not apply to the commutation price of the rations of any officer above the 'rank' of brevet major general, or of any officer entitled to commutation for fuel or quarters."

That your petitioner was an officer of the Volunteer Army of the United States from the 1st day of March, 1865, to the 22d day of November, A. D. 1865, and not above the 'rank' of brevet brigadier general, and entitled to receive commutation pay of fifteen subsistence rations per day for a period of two hundred and sixty-seven days; that he has been paid commutation at the rate of thirty cents per ration, when, by law, he should have been paid at the rate of fifty cents per ration, making a difference between actual payment and the
2 payment that he claims he is entitled by law to receive, twenty cents per ration on fifteen rations per day, for two hundred and sixty-seven days—$801 in the aggregate.

That your petitioner was serving in the field during said period of two hundred and sixty-seven days, and was not, therefore, by law entitled to commutation for fuel and quarters, and was not paid for such.

That your petitioner applied to the Paymaster General for the sum he claims to be due, and it was denied him; that he appealed to the Secretary of War, who rejected his claim by an erroneous construction of said statute, as claimed by your petitioner, and, therefore, he petitions this honorable court to award him judgment against the United States for the sum of $801—the sum of short payment under said law.

Your petitioner admits he was a brigadier general of volunteers from the 1st day of March, A. D. 1865, to the 22d day of November, 1865; but he denies, as a matter of law and usage, that a brevet brigadier general by rank is a grade below brigadier general. He claims that in "rank" the two officers are equal, and it has ever been so held in military law and usage from the earliest days, both in the British and American armies, upon all questions of "rank" as distinct from the question of pay or command.

And your petitioner further shows to this honorable court that, by virtue of the 19th section of the act approved March 3, 1847, it is enacted, "that the officers and men of the light artillery, when serving as such, and mounted, shall receive the same pay and allowances as provided by law for the dragoons."

That, for the period of time hereafter set forth, your petitioner was a captain, and in command of a light artillery company, and a major of artillery by brevet rank, and, as such major, commanded two companies of light artillery, and was paid for such service the pay and allowance

of a brevet major of artillery; but he claims he was entitled to be paid the pay and allowances of a brevet major of dragoons or cavalry, being a difference of ten dollars per month for himself, two dollars for his servant, for the period of eighteen months, to wit, in September,
3 1853, and from April, 1855, to November, 1856, amounting to the sum of two hundred and sixteen dollars. He therefore prays this honorable court to render judgment in his favor against the United States for this sum—the difference between the pay received and pay due him, by a proper construction of the law, being an addition of twelve dollars per month for the period of eighteen months, making the sum of two hundred and sixteen dollars.

Your petitioner further alleges that he is a loyal citizen of the United States; that he gave no aid or comfort to the late rebellion against the United States, or the persons engaged therein; that he is not indebted to the United States, and there exists no offsets or claims against him in favor of the United States; that he has made no assignment of said claims, or any part thereof, and that he is advised and believes the sums claimed are justly due him; and his present P. O. address is Newport, Rhode Island, "Fort Adams."

HENRY J. HUNT,
Brt. Maj. Gen'l, Col. U. S. Artillery.

T. J. D. FULLER, Solicitor,
P. O. address, Washington City.

STATE OF RHODE ISLAND, *County of Newport:*

NEWPORT, *March* 4, 1870.

Personally came Brevet Major General Henry J. Hunt, and made oath before me that this petition, by him signed, is just and true, according to his best information, knowledge, and belief.

Before me, W'M GILPIN,
Public Notary.

(Indorsed:) 6156. Henry J. Hunt vs. The United States. Original petition filed March 7, 1870.

4 In the Court of Claims of the United States, December term, 1869.

HENRY J. HUNT
vs.
THE UNITED STATES. } No. 6156.

And the said defendants, by their Attorney General, say that the petition is not sufficient in law.

THOMAS H. TALBOT,
Assistant Attorney General.

(Indorsed:) Demurrer. vs. The United States. No. .

5 Court of Claims, Dec. term, 1869.

HENRY J. HUNT
vs.
THE UNITED STATES. } 6156.

Now come the defendants, by their Att'y General, and say that the

said claimant should not further have or maintain his suit against the defendants for the sum of two hundred and sixteen dollars, claimed by virtue of the 19 section of the act approved March 3, 1847, for the reason that the petition for said claim was not filed in this court, nor transmitted to it within six years after the said claim first accrued.

THOMAS H. TALBOT,
Ass't Att'y General.

6 In the Court of Claims.

HENRY J. HUNT
vs.
THE UNITED STATES. } 6156.

And now, to wit, 29th of November, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Henry J. Hunt have and recover of and from the United States, the sum of seven hundred and ninety-eight dollars no cents, ($798 00.)

By the court.

A true copy of record.

7 In the Court of Claims, Dec. term, 1869.

HENRY J. HUNT
vs.
THE UNITED STATES. } 6156.

From the judgment rendered in the above-entitled cause in favor of the claimant, the defendants, by their Att'y General, make application for, and give notice of, an appeal to the Supreme Court of the United States, the said judgment affecting a class of cases, and furnishing a precedent for the future action of an Executive Department in the adjustment of such class of cases.

T. H. TALBOT,
Ass't Att'y Gen'l.

Filed in clerk's office, Nov. 29, 1870.

Ordered, That the appeal, as prayed in said cause, 6156, be allowed. Nov. 29, 1870.

By the court.

8 In the Court of Claims of the U. S., December term, 1869.

I, Edward G. Loring, presiding judge of the Court of Claims, do hereby certify that the judgment rendered in the case of Henry J. Hunt vs. The United States, on the 29th day of November, 1870, affects a class of cases and furnishes a precedent for the future action of an Executive Department in the adjustment of such class of cases.

EDW. G. LORING,
Presiding Judge.

9 In the Court of Claims.

HENRY J. HUNT
vs.
THE UNITED STATES. } No. 6156.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General for the defendants for the allowance of an appeal, as filed in the clerk's office, November 29, 1870, and of the order of the court, Nov. 29, 1870, allowing the same; of the certificate of the presiding judge that said judgment will affect a class of cases.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 20th day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 436. The United States, appellants, vs. Henry J. Hunt. Court of Claims. Filed 20th December, 1870.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
HENRY J. HUNT. } No. 221.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellants*,
vs.
HENRY J. HUNT. } No. 221.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The petitioner, a brigadier general of volunteers, claims commutation pay under the 3d section of the act of March 3, 1865, (13 Statutes at Large, 497,) which is as follows:

"That from and after the first day of March, eighteen hundred and sixty-five, and during the continuance of the present rebellion, the commutation price of officers' subsistence shall be fifty cents per ration: *Provided*, That said increase shall not apply to the commutation price of the rations of any officer above the rank of brevet brigadier general, or of any officer entitled to commutation for fuel or quarters."

The Court of Claims gave judgment in his favor, and the United States appeal, and assign as error, that a brigadier general is not entitled to the benefit of this provision.

ARGUMENT.

The only point in this case is a very narrow one, and it would seem to be a very simple one: Is a brigadier general above the rank of a brevet brigadier general? In some respects he may not be, but when the dignity of the two positions is considered, and when it is every-day practice to promote persons from a brevet rank to a full rank of the same grade, the answer to be given to the question hardly seems to admit of doubt; and that Congress considered that there is such a difference in rank between the two officers is apparent from the fact of its mentioning the rank of *brevet* brigadier general, when, if it had intended to include that of brigadier general, it would have used the words "brigadier general" only.

The judgment of the Court of Claims ought to be reversed.

C. H. HILL,
Assistant Attorney General.

Supreme Court of the United States.

DECEMBER TERM, 1872.

THE UNITED STATES,
APPELLANTS,
vs.
HENRY J. HUNT,
APPELLEE.

No. 221.

BRIEF FOR APPELLEE.

T. J. D. FULLER,
Counsel for Appellee.

M'GILL & WITHEROW, PRINTERS AND STEREOTYPERS, WASHINGTON, D. C.

Supreme Court of the United States.

THE UNITED STATES, Appellants,
vs.
HENRY J. HUNT, Appellee.
No. 221.

BRIEF FOR APPELLEE.

Sole question, arising upon the records, is the proper construction to be given to the *proviso* of the 3d section of the act of March 3, 1865, and more especially the meaning of the word "*rank*," as used in that proviso.

The entire section of the act is set forth in the petition, on page 1 of the record.

The general enacting clause increases the commutation price of the ration from thirty to fifty cents per ration, from the first day of March, 1865, to the end of the rebellion, for all officers of the regular or volunteer army. The *proviso* limits and restricts the increased price of the ration from officers *above* the *rank* of brevet brigadier general, and this limitation raises the question, whether a brigadier general, in *rank*, is above that of a brevet brigadier general, or whether they are of the same *rank* or grade, or of equal rank. If of equal rank, then the one cannot be above the other.

The Pay Department construed the proviso to mean, that a brevet brigadier general, in rank, is *below* a brigadier general, and consequently that the converse of the proposition is equally true, and a brigadier general, in *rank*, is *above* a brevet brigadier general; and therefore a brigadier is not entitled to the benefits of the act.

The solution of the question turns upon the equality of rank of a brigadier with a brigadier *by brevet*.

The Court of Claims held, that the rank of each is the same; and consequently the one is not above or below the other.

The reading of the 4th section of the same act will aid materially in arriving at a clearer conclusion of the intention of the law-makers. By reading the 3d and 4th sections in conjunction, it is manifest that the legislature intended to increase the pay of officers in two ways: *First*, by increasing the commutation value of the ration; and, *second*, by giving three months' extra pay to all officers on their being mustered out of service. And both sections have a *proviso* attached, which excludes officers of certain rank from its benefits. The proviso in the 3d section makes the general provision inapplicable to officers *above* the *rank* of brevet brigadier general, and the 4th section makes the extra three months' pay inapplicable to officers *below* the *rank* of brigadier general.

If, in truth, a brevet brigadier general, in rank, is below a brigadier general, he would, upon muster out of service, be entitled to the three months' extra pay, under the 4th section of the act.

But strange as it may appear, the Pay Department, in their construction of the 4th section, held that a brevet brigadier general was not below a brigadier, and therefore not entitled to the three months' extra pay; but in their construction of the 3d section held, that a brigadier, in *rank*, is above a brevet brigadier, and consequently, that a brigadier general is not entitled to the increased price of the ration.

The claimant's construction of the act is, that the proviso to the 3d section should be read as though the word "*brevet*" was omitted, or not there.

That in *rank* there is no difference between a brevet brigadier, or, more accurately speaking, a brigadier general *by brevet* and a brigadier general without a brevet. That the one may command the other, by virtue of the priority of the date of their respective commissions when thrown together,

under circumstances contemplated by the usage of the service and the Articles of War.

The word "*rank*," as used in the proviso, is the hinge upon which the construction of the proviso turns.

What is rank in the army?

The grades of rank in the army, as known and recognized by law at the present time, are—

1. General.
2. Lieutenant General.
3. Major General.
4. Brigadier General.
5. Colonel.
6. Lieutenant Colonel.
7. Major.
8. Captain.
9. Lieutenants—first and second.

The law knows no intermediate rank, or grade of rank, between the enumerated grades or ranks.

There is but one rank of brigadier generals. There is not two ranks of brigadier generals, the one inferior, or the other superior; but one grade, one rank.

There are two kinds of rank *in tenure*, but, nevertheless, equal.

"RANK" BY BREVET, IS RANK IN THE ARMY GENERALLY, AS CONTRADISTINGUISHED FROM RANK IN SOME ONE OF THE DIVISIONS OF THE ARMY.

The Claimant says *in rank* he is not above a brevet brigadier, because a brevet brigadier of older commission may command him, and he is bound to obey his ORDERS, which, in military parlance, can never happen if the *rank* is above him, or he is of lower *rank*.

Campbell's Dictionary of Military Science defines "*brevet*" to be "a rank in the army higher than the regimental commission held by an officer. In garrison and bigade duties it confers precedence according to seniority.

Webster, in the latest edition of his Dictionary, defines brevet rank, or rank by brevet, as follows: "'*A brevet*' is a commission in the army at large, as distinguished from a

commission in a particular regiment; as artillery, cavalry, infantry, or corps of engineers."

To the same effect, and in the same language, is the deffinition of "a brevet" in the latest revised Army Regulations.

There is, therefore, but one RANK of each gradation, while there may be rank lineal and rank by brevet of the same grade, the one in some particular corps, the other in the army generally, without limitation to any particular corps or division of the army.

Both ranks are conferred by the nomination of the President and confirmation of the Senate, and the commissions run in the same form, with the difference before noted, whether in some one of the particular corps of the army or in the army generally, without limitation to any one corps.

Rank by brevet is a rank established by law, and the President is authorized by law, in conjunction with the Senate, to confer it for gallant and meritorious services rendered; and is generally held by persons who have so distinguished themselves, and conferring a rank above that, which is held in a particular corps, and to be exercised on proper occasions, such as sitting on courts martial, or when serving with detached portions of different corps, acting in conjunction, or by the special assignment of the President.

Now, to hold *rank* by brevet, to be inferior to rank in a particular corps, is to degrade the rank earned by *meritorious service*, and conferred with all the dignity and formality of rank lineal, and subordinate a rank in the army generally to that of a rank in a particular corps, acquired by casualty or accidental promotion, or personal favoritism.

But an officer may, and often does, hold two ranks of different grades; as, for instance, the rank of captain, in the infantry, artillery, or cavalry, and the rank of major by brevet in the army generally.

Our army being organized on the basis of the British army, the power to confer the *brevet* rank of a higher grade upon meritorious officers was exercised from the earliest

day. It was, in the first instance, conferred by the Executive alone.

Congress, by act of July 6, 1812, section 4, enacted, "That the President is hereby authorized to confer *brevet rank* on such officers of the army as shall distinguish themselves by gallant actions, or meritorious conduct, or who shall have served ten years in any one grade: *Provided*, That nothing herein contained shall be so construed as to entitle officers '*so breveted*' to any additional pay and emoluments, except when commanding separate posts, districts, or detachments, when they shall be entitled to and receive the same pay and emoluments to which officers of 'THE SAME GRADE' are now, or hereafter may be, entitled by law to receive."

This language clearly indicates the intention of Congress that officers holding rank *by brevet* were of the same grade of rank, and of equal *grade* of rank, grade for grade, as officers of *lineal* or regimental rank, and the *precedence* of each grade was fixed by the 61st *article* of war by date of commission: a rule that never has been departed from to this day.

Congress, by a later act, approved April 16, 1818, further enacted, (sec. 2,) "That no brevet commission shall hereafter be conferred, but by and with the advice and consent of the Senate."

This statute would seem to remove all plausible pretext for denying that *rank* conferred *by brevet*, is not on terms of equality with *rank* conferred in any other way. To hold otherwise would but degade the *rank* earned "*by meritorious service*," and place it below that which is accidental or political, thereby reversing the whole theory of military motive and organization. In no sense, therefore, can it be maintained for a moment that rank *by brevet* is an *inferior rank* to lineal or regimental rank; for to hold otherwise would enable officers of an *inferior grade of rank*, when they come in contact, to take command and precedence over officers of superior grade and rank. The law is not guilty of such an absurdity. But authorities and military usuage, in support of the proposition of equality of rank by brevet

to rank of the line, do not end yet: one more only will be cited.

Congress, by the 7th section of the act approved June 18, 1846, among other things, enacted, "That appointments in the line and in the general staff, which confer equal rank in the army, shall not be held by the same officer at the same time; and when any officer of the staff, who may have been taken from the line, shall, in virtue of his seniority, have obtained, or be entitled to, a *grade* in his regiment EQUAL to the commission he may hold in the staff, the said officer shall vacate such staff commission, or he may, at his option, vacate his commission in the line."

To illustrate: A lieutenant in the ARTILLERY OR INFANTRY is appointed on the staff of the Adjutant General, Quartermaster General, or Commissary General, with the rank (*by brevet*, of course) of a captain or major; he still retains his place in his regiment, and his name is borne on the Army Register until by due course of promotion he reaches a grade of rank EQUAL to that of his staff appointment; then he must make his election, vacate the one or the other. Why? Because he cannot hold two offices of *equal grade* and rank at the same time. HERE, THEN, CONGRESS, BY SPECIAL ENACTMENT, HAS DECLARED THE EQUALITY OF RANK BY BREVET WITH LINEAL RANK. What more can be said in support of the proposition of the *equality of rank* between brevet and lineal rank, when Congress has declared them to be identical in effect, by enacting that no officer at the same time shall hold two offices of *equal rank?* Now, then, the question naturally repeats itself, Where two grades are equal, can one of them be held to be inferior to the other?

But, in popular parlance, it may be asked, Is not the office of a full brigadier general more valuable, more desirable, than that of a brevet brigadier? And does not this give an idea that the one is inferior to the other? The answer is, it is not a question of *choice*, *of value*, between the two kinds of commissions. Those are elements, but not in any sense elements involved in the question under discussion.

But it may be said, grant all that has been claimed by the argument of the equality of the two grades of rank, why may not Congress give increased pay to one, and not to the other grade? The offices, being the same in rank, but held by *different tenures*, Congress could distinguish between the two by the different *tenures* of office.

The answer to this question has already been made in the earlier part of the argument, to wit, that the number of rations had not been increased, and the supposed or desired distinction cannot attach or be made effective.

But, further, it may be said, by way of reply, if such an intention existed in the mind of the legislature, it ought to be made manifest by the most clear and unambiguous language, which is not to be found in this act.

Another reason is anticipated, that may be, with some apparent show, assigned: Why may not a *brevet brigadier* have the price of his rations increased, and at the same time a full brigadier, not have his increased?

The answer is, by the eighth paragraph of the Army Regulations, "*An officer, not having orders from competent authority, cannot put himself on duty by virtue of his commission alone.*"

There is no competent authority short of the President himself that can place an officer in command by virtue of his brevet *rank*, except in those cases where, by the Rules and Articles of War, he may exercise it.

The legislature, in the use of the word "*rank*," must have used it in its legal and well-defined sense, and in harmony with previous legislative use and definition, as manifested in the act of April 16, 1818, and the act of June 18, 1846, before cited.

II.

But the argument in support of the decision of the court below is not exhausted yet.

WHAT DID THE LEGISLATURE INTEND? Did it intend to give the increase in the third section to a *brevet* brigadier, and not to a brigadier? If so, why? Wherein is the distinc-

tion? What the reason? None is manifest in the act itself. The word "*brevet*" either means something or nothing. If it means anything, it is a synonym with brigadier. And we say it is. But if not, *it can have no possible signification whatever.* The statute must be construed by the well-known rules of judicial interpretation, one of which is, "*That a proviso in a statute is to be strictly construed, and takes no case out of the enacting clause which is not fairly within the terms of the proviso.*" (United States *vs.* Dickson, 15 Peters' Rep., p. 141.)

Another rule is, "That doubtful words, if not of a scientific or technical character, are to be interpreted according to their popular meaning; but words of a scientific or technical character are to be construed in accordance with their known meaning in the science or art to which they appertain." (6 McLean's Rep., p. 152.)

A further rule, and one especially applicable to the case under consideration, is, "Where the words of a statute, fixing the compensation of a public officer, are *loose* and *obscure,* and admit of two interpretations, they should be construed in favor of the officer." (United States *vs.* Morse, 3 Story's Rep., p. 87.)

Such are the judicial rules of construction.

But departmental rules of construction are directly the reverse.

The idea suggested, that Congress intended to give the increased price of twenty cents upon each ration to a brevet brigadier, and not to a full brigadier, cannot be maintained, for these reasons:

1. If a brevet brigadier at the time was in the receipt of a brigadier's pay and emoluments, there is no apparent justice or reason in discriminating between the two ranks. It would be simply invidious to do so.

2. If a brevet brigadier was not in the receipt of a brigadier's pay and emoluments, the construction contended for does not accomplish the object imputed to the legislature, and the act becomes, as to brevet brigadiers, a mere nullity.

And the nullity arises in this way: The act does not INCREASE the number of the rations any officer shall receive. That is left precisely as it was under the old law. A *colonel*, and brigadier by brevet, unassigned, according to his army rank, would receive only a colonel's pay and number of rations, to wit, eight, the same as if colonel, and not brigadier by brevet. The colonel's rations he would draw, with the increased price, at all events, and no more; so that the words in the proviso, "*That this increase shall not apply to any officer above the rank of brevet brigadier general*," practically have the same effect as if the language used was, "*That this increase shall not apply to any officer above the rank of colonel.*"

This is the practical operation of the statute, as construed by the Pay Department; and such, it is conceded by them, is their interpretation. Now, if this construction accords with the intention of the legislature, the simple and natural inquiry arises at once, Why did not the legislature adopt this mode of expressing its intention?

It will not do to assert that the legislature used the words, "*not above the rank of a brevet brigadier general*" as synonymous with the words *not above the rank of a colonel*. It would approach much nearer to the manifest intention of the legislature to read the *proviso* as though the word "brevet" was not there. But this is NOT the rule of construction. The rule is to give effect to each word in the statute, if practicable.

The construction contended for by claimant conforms to this rule.

The law makes the offices of *brevet brigadier* and *brigadier* to be of the *same rank*.

The statute, in its chief enacting clause, gives the increase of twenty cents upon each ration to all officers of the army. The *proviso* comes in by way of restriction and limitation, and declares that the general enacting clause shall not operate in favor of officers *above* the RANK of brevet brigadier; full brigadier, being of the same *rank*, and not above a *brevet*, is, *ex vi termini*, included. The whole confusion,

if any, arises by making a distinction of RANK where none exists in law.

To understand the intention of the legislature fully, regard should be had to the state of the law, touching the compensation of officers of the army, before the passage of the act in question.

The pay of officers, as is well known, was made up of pay proper, with commutation, at a fixed price, of rations, quarters, and fuel, servants, and forage, &c. Officers serving in the field, were not entitled to receive commutation pay for fuel and quarters. (See paragraph 1084, p. 162, Army Regulations.)

But all other officers, serving at posts, or on detached duty, were entitled to commutation pay of fuel and quarters, or to fuel and quarters in kind. For instance: commutation for fuel and quarters for an officer of the rank of brigadier general in this city would amount to about sixteen hundred dollars per annum.

In the latter part of the war, the number of officers, on detached duty, or not serving in the field, was enormous, and all such as were not serving in the field obtained fuel and quarters, either in kind or in commutation, mostly by commutation, for the reason, the Government had not quarters or fuel in kind equal to the demand.

The consequence was, that majors, lieutenant colonels, colonels, and brigadiers, on detached duty, were actually receiving hundreds of dollars more compensation annually than officers of the same rank serving in the field.

While the latter were enduring the fatigues and hardships and deprivations of the field, the former were on "*fancy duty*," and receiving largely increased pay.

This state of things caused discontent and complaint among the officers in the field, bearing the brunt and hardships of active service.

Congress saw the inequality of the compensation, and hence this act was passed to remedy the evil, and, in fact, to equalize pay to the meritorious.

While the act does not increase the number of rations an

officer is entitled to receive, it increases the price 20 cents per ration to such as were not receiving, and not entitled to receive commutation of fuel and quarters. It therefore only increased the compensation of officers in the field, and thus equalized the existing inequality.

The act, therefore, being a remedial one, should receive a construction calculated to suppress the mischief and afford the relief intended.

T. J. D. FULLER,
Counsel for Appellee.